

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ENROUTE SYSTEMS CORP.,

Plaintiff,

v.

ARRIVALSTAR S.A., *et al.*,

Defendants.

No. C11-0451RSL

ORDER DENYING MOTION TO  
EXTEND TIME TO SERVE  
INFRINGEMENT CONTENTIONS

This matter comes before the Court on “Defendant ArrivalStar S.A.’s Motion for Relief from Deadline.” Dkt. # 23. Defendant requests an extension of the deadline for stating its preliminary infringement contentions. Defendant argues that an extension is appropriate because (a) the Court’s scheduling order allowed ArrivalStar only fourteen days, including holidays, in which to prepare and serve its preliminary contentions, (b) plaintiff misled ArrivalStar into believing that the case management deadlines were on hold while the parties explored settlement, and (c) denying an extension would severely prejudice ArrivalStar by precluding consideration of its claims on the merits.

Pursuant to Fed. R. Civ. P. 16(b)(4), case management deadlines established by the Court “may be modified only for good cause and with the judge’s consent.” The case management order in this case likewise states “[t]hese are firm dates that can be changed only by order of the Court, not by agreement of counsel or the parties. The Court will alter these dates only upon good cause shown . . . .” Dkt. # 22 at 2. None of the arguments raised by ArrivalStar establishes good cause for the requested extension.

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1 The Court's case management order was issued on December 21, 2011, and  
2 required the filing of preliminary infringement contentions on or before January 4, 2012. A two  
3 week period in which to set forth infringement contentions is standard in this district and should  
4 not have come as a surprise to ArrivalStar or its counsel. A similar period is provided by default  
5 in Local Patent Rule 120 in order "to streamline the pre-trial and claim construction process, and  
6 generally to reduce the cost of patent litigation." Local Patent Rule 101. Courts in this district  
7 expect that a party asserting a claim of patent infringement has, at the time of filing, information  
8 sufficient to support the claim and is therefore prepared to state its infringement contentions  
9 early in the litigation. If, as ArrivalStar weakly suggests in its motion, the intervening holidays  
10 made compliance with the January 4th deadline difficult, ArrivalStar should have filed a timely  
11 motion to extend and set forth the circumstances that established "good cause." No such motion  
12 was filed, and there is no indication that counsel was unavailable during the relevant period.

13 Nor did Enroute Systems trick ArrivalStar into non-compliance with the Court's  
14 order. The documents submitted in support of ArrivalStar's motion for relief from deadline do  
15 not support an inference that Enroute Systems acted in bad faith, attempted to fool ArrivalStar,  
16 or otherwise agreed to put this litigation "on hold." A week after the Court issued its case  
17 management order, ArrivalStar contacted Enroute Systems to see if it was interested in resolving  
18 the litigation quickly. ArrivalStar recounted the history of the dispute and sweetened a  
19 settlement proposal that had been made in December 2010.<sup>1</sup> Opposing counsel did not respond  
20 until January 3, 2012, at which point he simply noted that he was hoping to meet with his client  
21 later in the week and would get back to ArrivalStar later. Enroute Systems did not suggest that  
22 settlement was likely or indicate that the litigation deadlines would be held in abeyance. The  
23 infringement contentions were due the next day and yet ArrivalStar made no attempt to negotiate

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25 <sup>1</sup> Although ArrivalStar asserts that this communication was in response to a request from  
26 Enroute, there is no evidence to support such an assertion and there is no indication that the alleged  
request was in any way misleading.

1 a stipulated extension of the deadline or to seek relief from the Court. If, as ArrivalStar states in  
2 its memorandum, it believed the litigation was “on hold,” that belief was not reasonable given  
3 the nature of the communications, the pending case management deadlines, and the explicit  
4 requirement for judicial consent in both the Federal Rules of Civil Procedure and the case  
5 management order.

6 Finally, ArrivalStar argues that an extension is appropriate because, without one,  
7 its infringement contentions may not be heard on the merits and ArrivalStar’s litigation position  
8 will be prejudiced. The Court has a strong preference for resolving matters on their merits.  
9 However, a review of the governing rules and case law make clear that parties in federal court  
10 are not free to ignore the deadlines established in a case management order. Rule 16 was  
11 amended in 1983 to require scheduling orders that govern pre-trial as well as trial procedure.  
12 The purpose of the change was to improve the efficiency of federal litigation: leaving the parties  
13 to their own devices until shortly before trial was apparently costly and resulted in undue delay.  
14 Under the new rule, once a case management schedule issues, changes will be made only if the  
15 movant shows “good cause.”

16 Rule 16(b)’s “good cause” standard primarily considers the diligence of the party  
17 seeking the amendment. The district court may modify the pretrial schedule “if it  
18 cannot reasonably be met with the diligence of the party seeking the extension.”  
Fed. R. Civ. P. 16 advisory committee’s notes (1983 amendment) . . . .

19 Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992). See also Zivkovic v.  
20 S. Cal. Edison Co., 302 F.3d 1080, 1087-88 (9th Cir. 2002) (where plaintiff failed to  
21 “demonstrate diligence in complying with the dates set by the district court,” good cause was not  
22 shown). Prejudice to the moving party, standing alone, does not supply the necessary “good  
23 cause.” Johnson, 975 F.2d at 609 (“Although the existence or degree of prejudice to the party  
24 opposing the modification might supply additional reasons to deny a motion, the focus of the  
25 inquiry is upon the moving party’s reasons for seeking modification. . . If that party was [sic]  
26 not diligent, the inquiry should end.”) (emphasis added).

1 In Johnson, plaintiff sought an extension of time in which to add as a party the  
2 actual owner of the ski resort at which plaintiff was injured. The incorrectly-named party moved  
3 for summary judgment after the joinder cut-off date had passed. The district court granted the  
4 dispositive motion and declined to allow plaintiff to amend his complaint. The Ninth Circuit  
5 reviewed the discovery record and found that the named defendant had not hidden relevant facts  
6 or attempted to mislead plaintiff regarding the real parties in interest.

7 The burden was upon [plaintiff] to prosecute his case properly. He cannot blame  
8 [the named defendant] for his failure to do so. The simple fact is that his attorneys  
9 filed pleadings and conducted discovery but failed to pay attention to the responses  
10 they received. That is precisely the kind of case management that Rule 16 is  
designed to eliminate. It is one of the reasons that the district courts have been  
forced to assume the burdens of case management themselves.

11 Id. at 610. In the absence of reasonable diligence in complying with the case management  
12 deadlines, plaintiff could not establish good cause for the requested modification. The fact that  
13 plaintiff lost his claim (i.e., suffered substantial legal prejudice) was not a substitute for the  
14 necessary good cause. Applying the analysis in Johnson to this case means that, having failed to  
15 show that it acted with reasonable diligence, ArrivalStar's potential inability to pursue its claim  
16 of infringement does not establish good cause for the requested extension.

17 There is no question that this is a harsh result for defendant. However, the policy  
18 judgments that prompted the adoption of Rule 16(b) serve the larger interests of judicial  
19 efficiency and economy, not just the interests of individual litigants. In addition, there is a clear  
20 trend among appellate courts to focus the Rule 16(b)(4) analysis on the movant's diligence,  
21 rather than competing claims of prejudice. See Oravec v. Sunny Isles Luxury Ventures, L.C.,  
22 527 F.3d 1218, 1232 (11th Cir. 2008) (the "good cause" standard "precludes modification [of the  
23 scheduling order] unless the schedule cannot be met despite the diligence of the party seeking  
24 the extension."); O2 Micro Int'l Ltd. v. Monolithic Power Sys., Inc., 467 F.3d 1355, 1367-68  
25 (Fed. Cir. 2006) (because the movant had not acted diligently in seeking an extension of the  
26 infringement contention deadline, there was "no need to consider the question of prejudice to the

1 non-movant”); Rahn v. Hawkins, 464 F.3d 813, 822 (8th Cir. 2006) (“The primary measure of  
2 good cause is the movant’s diligence in attempting to meet the order’s requirements.”);  
3 O’Connell v. Hyatt Hotels of Puerto Rico, 357 F.3d 152, 155 (1st Cir. 2004) (“Indifference by  
4 the moving party seals off this avenue of relief irrespective of prejudice because such conduct is  
5 incompatible with the showing of diligence necessary to establish good cause.”) (internal  
6 quotation marks and alterations omitted); Zivkovic, 302 F.3d at 1087 (“If the party seeking the  
7 modification was not diligent, the inquiry should end and the motion to modify should not be  
8 granted.”) (internal quotation marks omitted); Parker v. Columbia Pictures Indus., 204 F.3d 326,  
9 340 (2nd Cir. 2000) (“[A] finding of ‘good cause’ depends on the diligence of the moving  
10 party.”). But see Leary v. Daeschner, 349 F.3d 888, 906-09 (6th Cir. 2003) (considering both  
11 the moving party’s diligence and prejudice to the opposing party when evaluating a motion to  
12 extend a case management deadline). Where diligence, and therefore good cause, have not been  
13 shown, the district court runs the risk of reversal should it ignore the requirements of Rule 16(b).  
14 See Sherman v. Winco Fireworks, Inc., 532 F.3d 709 (8th Cir. 2008) (reversing jury verdict in  
15 favor of defendant on newly-added preemption defense where amendment was not justified by  
16 good cause).

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18 For all of the foregoing reasons, the Court finds that ArrivalStar has not shown  
19 good cause for failing to meet the infringement contention deadline. Its motion for an extension  
20 of that deadline is therefore DENIED pursuant to Fed. R. Civ. P. 16(b).

21 Dated this 28th day of March, 2012.

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24 Robert S. Lasnik

25 United States District Judge  
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